
Appeal Decision

Site visit made on 11 June 2018

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2018

Appeal Ref: APP/G1250/W/18/3192695

1 Oakwood Road, Bournemouth BH9 3DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Leanne Canning of Mulberry Nature Nursery Limited against the decision of Bournemouth Borough Council.
 - The application Ref 7-2017-10721-E, dated 2 August 2017, was refused by notice dated 20 November 2017.
 - The development is change of use of dwelling to part of day nursery, increasing number of attendees to 18 children and 6 babies (retrospective application).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - a) whether the increase in the number of children attending the day nursery has adversely affected the living conditions of surrounding residents by reason of noise and disturbance; and
 - b) the effect on the supply of residential accommodation in the Borough.

Reasons

Living conditions

3. The appeal property already functions as a day nursery with the benefit of planning permission. A planning condition restricts the capacity of the premises to a maximum of 9 pre-school children and 6 babies at any one time. However, the number of attendees has risen above that permitted, to 18 children and 6 babies. The business has been operating at this level for the past 2 years. The application seeks to retain the present unauthorised arrangement.
4. Relevant advice is set out within the Council's Supplementary Planning Guidance (SPG) on Day Nurseries and Play Groups (2001). This document amplifies saved Policy 5.32 of the Bournemouth District Wide Local Plan 2002 (BDWLP) and was published following public consultation. The guidance is somewhat dated but its provisions remain applicable to cases such as this and thus I have attached it significant weight.

5. The SPG explains that one of the most common problems arising from day nurseries is noise disturbance to neighbours. It states that a figure of 20 children will normally be considered the maximum for day nurseries in residential areas. Nurseries with more children are better suited to large buildings with extensive gardens in roads characterised by hotels, educational establishments and other commercial uses. Regardless of location, all nurseries with more than 12 children are expected to provide a minimum of 150 m² of outdoor play space.
6. Mulberry Nature Nursery is located in a predominantly residential area. The number of children attending on a daily basis exceeds the maximum figure stipulated in the SPG. The parties disagree over the size of the outdoor play space, but there is no dispute that it falls below the minimum standard. The Council is concerned that these conditions combine to create noise and disturbance for local residents.
7. The appellant argues that the current level of activity has gone unnoticed for the past 2 years and therefore there should be no cause for concern. However, residents have described the nursery as being loud at times. Furthermore, I note that there have been complaints to the Environmental Health service over the years. It is therefore clear that excessive noise is an issue which has affected quality of life for some neighbours.
8. There is no acoustic report before me and I have no objective means of quantifying the noise impacts across the day. Nevertheless, it is logical to assume that the volume will vary according to how many children are playing in the outdoor space. I understand that children only come outside in low numbers and always with adult supervision for behaviour management and noise control. However, I also note that the setting is 'free flow' to accord with Ofsted requirements. This information is contradictory and does not give me the necessary confidence that unacceptable disturbance will not arise from large numbers of children playing outdoors simultaneously – particularly in fine weather when the neighbours are most likely to be enjoying their gardens.
9. I acknowledge that the nursery building itself acts as an acoustic barrier by presenting blank walls onto adjoining gardens. At certain times of day traffic noise from Malvern Road may prevail over the sound of children. Nonetheless, sound is capable of carrying some distance, particularly when background noise levels are low. In my opinion, there is insufficient technical evidence to demonstrate that the increase in numbers has not had an unacceptable adverse effect on the living conditions of residents. No reliable mechanism has been put forward to mitigate any harmful noise impacts.
10. Accordingly, I find conflict with Policies CS38 and CS41 of the Bournemouth Local Plan: Core Strategy (2012) insofar as these policies strive to protect the living conditions of neighbouring residents. No convincing evidence has been put forward to justify making a departure from the SPG.

Supply of residential accommodation

11. The first floor of the building was previously occupied by one of the directors of the nursery business. The flat has since been vacated and the former living room and bedroom are now used as a staff room and sleeping area for children respectively. The Council considers that this has resulted in an unacceptable loss of residential accommodation in the Borough.

12. Saved policy 6.3 of the BDWLP stipulates that existing residential accommodation will be retained unless specific circumstances apply. None of the listed criteria are relevant to this particular case and therefore there is conflict with the policy. It is thus necessary to consider whether other material considerations justify making a departure from the policy in this instance.
13. The first floor accommodation is accessed from within the central hallway of the nursery, with a safety gate preventing children from climbing the stairs to the upper landing. The lack of separate access means that occupiers of the flat would need to walk through the childcare setting and they would also need to share the nursery's kitchen as there are no cooking facilities upstairs. Independent occupation would be wholly impractical and would be likely to raise child safeguarding issues. There is no operational requirement for a member of staff to be resident on site when the nursery is closed and it is unreasonable for the Council to expect that the first floor is occupied on this basis.
14. To my mind, it is inherently more sensible to use the first floor for purposes ancillary to the nursery – uses such as staff welfare, office administration and a quiet space for children's naps. Although the SPG seeks to restrict day nurseries to the ground floor and resist total conversion of houses, this does not factor in the practicalities I have set out above. I therefore find that other material considerations outweigh the conflict with BDWLP Policy 6.3. The loss of residential accommodation does not justify dismissal of the appeal.

Other Matters

15. Residents have raised concerns regarding parking and highway impacts. The increase in the number of children attending the nursery will almost certainly have resulted in additional vehicle trips to the site. However, pick-ups and drop-offs are staggered and there is provision within the site for two parking spaces, together with unrestricted kerbside parking in the immediate vicinity. The appellant estimates that only half of children travel by car and likewise several members of staff make the journey to work on foot. Whilst I have no reason to doubt the reports of inconsiderate and illegal parking by parents, I share the Highway Authority view that Oakwood Road has the capacity to safely accommodate the traffic generated by the development.
16. I have taken account of the need for childcare places in the Borough and the fact that the Council was supportive of applications for a day nursery on the site and its subsequent extension with a baby unit. However, these material considerations need to be balanced against the location of the nursery within a suburban area where residents have a reasonable expectation of peace and quiet within their gardens. The evidence before me is insufficient to persuade me that a suitable balance has been struck between living conditions and the numbers of children attending the nursery.

Conclusion

17. For the reasons given above, and having regard to all other matters raised including the appellant's offer to accept a condition restricting the nursery to weekday operation, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR